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April 21, 2023

Via Email

Judge Kaplan

Re: **In re LTL MANAGEMENT LLC, Case No. 23-12825 (MBK)**

Valadez v. Johnson & Johnson, et al.
Alameda County Superior Court, Case No. 22CV012759

Dear Judge Kaplan,

I write to seek clarification regarding the August 20, 2022 Order in the Valadez v. J&J matter. At 3 pm PT yesterday, Judge Seabolt held a case management conference to get a status update regarding your honor's ruling. J&J and LTL's attorneys and Plaintiff have different views on the Order.

I advised Judge Seabolt that we could prepare the case for trial and return to your honor on May 3rd to give you an update and ask that the motion for lift stay for a trial be granted on May 3rd. J&J and LTL is of the position that LTL is still stayed, and they do not have to do anything or participate in the depositions. It was also their position that Judge Seabolt should not set a trial until after June 15. ¹

I did not interpret your Order to prevent LTL from participating in the work-up of this case. I can't imagine having to conduct two depositions of every witness (one now and one later). That would clearly waste resources in this case. Your Honor told me to advise chambers about my decision to proceed or appeal: I plan on proceeding to work up the case for trial if in fact my interpretation of your Order is correct. If I am incorrect, I will need to consult with Appellate counsel on the east coast about the emergency writ we discussed.

Thank you for your prompt consideration of this matter.

Respectfully Submitted,

/s/ Joseph Satterley

Joseph Satterley

¹ Attached hereto as Exhibit A is a true and correct copy of a rough transcript from yesterday's State Court Case Management Conference in the *Valadez* matter.

1 *** Rough Transcript of Hearing – April 20, 2023 ***

2 Valadez v. Johnson & Johnson

3

4 THE COURT: Let me call Valadez versus Johnson
5 & Johnson.

6 MR. SATTERLEY: Good afternoon, Your Honor.

7 THE COURT: Let me get appearances on the
8 defense side.

9 MR. KING: Good afternoon, Your Honor this is
10 Bryan King on behalf of Johnson & Johnson in the Valadez
11 matter.

12 THE COURT: Good afternoon Mr. King.

13 MR. BROWN: Good morning (sic), Your Honor
14 Michael Brown on behalf of Johnson & Johnson.

15 THE COURT: Good afternoon Mr. Brown.

16 MR. BROWN: Good afternoon to you judge.

17 MR. RICHMAN: Good afternoon Your Honor Scott
18 Richman on behalf of Johnson & Johnson.

19 MR. CALFO: Good afternoon, Your Honor this is
20 Alexander Calfo for Johnson & Johnson as well.

21 THE COURT: Anyone else.

22 MS. CLANCY: Good afternoon, Your Honor Denyse
23 Clancy for the plaintiff I apologize for the mask we

24 have some illness in my house.

25 THE COURT: You don't need to apologize for

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1 illness in your house.

2 MS. KO: And good afternoon, Your Honor Sandra
3 Ko on behalf of Albertsons, Safeway, Lucky, Save Mart,
4 Target and Walmart.

5 MS. PRZETAK: Good afternoon, Your Honor Laura
6 Przetak appearing as designated defense counsel.

7 THE COURT: Good afternoon to all. That is
8 all. Let me hear from Mr. Satterley first about the
9 status.

10 MR. SATTERLEY: Sure Your Honor. Thank you
11 would I please the Court we appeared before Judge Kaplan
12 this morning I am --

13 THE COURT: This morning.

14 MR. SATTERLEY: It was via Zoom so it was East
15 Coast time and Judge Kaplan issued his final ruling and
16 he lifted the stay with regard to Valadez case. I don't

17 have a transcript yet but I to Your Honor in essence
18 Judge Kaplan said is to continue the case at trial to
19 let Your Honor know the case to trial and report back to
20 Judge Kaplan on May the 3rd for the go ahead and just to
21 give Your Honor bigger picture of what's going on. He
22 lifted the stay with regards to J&J and other protective
23 party injunction to the extent J&J parent company and
24 all of the other protective party.

25 THE COURT: Let me ask are we talking about

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1 just Valadez. I realize you're often on my calendar
2 today but I have plenty.

3 MR. SATTERLEY: We have other Johnson & Johnson
4 case.

5 THE COURT: They're all are.

6 MR. SATTERLEY: That's why I give Your Honor a
7 bigger picture we talk about CMC on another day. So in
8 those other cases he said he lifting the stay and order
9 us to do whatever we need to do take deposition and file
10 lawsuits or whatever. But we couldn't proceed to trial

11 until June the 15th like 55th day period don't go to
12 trial on those dates. On Valadez he made exception and
13 said he wants us to continue work on the case and get it
14 ready for trial and report back to him on May the 3rd.

15 THE COURT: I see.

16 MR. SATTERLEY: I'm going to ask him on May 3rd
17 we have a hearing on Tuesday he ask specifically ask
18 question Page 316 of the transcript on Tuesday he asked
19 what we needed to do to prepare at the time of the TR0
20 we have about eight days of deposition scheduled.

21 THE COURT: It was a lot scheduled I remember
22 well this trial raise the issue if it were lifted there
23 obviously would be ease to conduct discovery to get
24 Valadez actually ready to call on a jury and I certainly
25 agree with that.

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1 MR. SATTERLEY: Sure. What I did after
2 Judge Kaplan ruling I look at in my motion lift the stay
3 and argument the Judge Kaplan on the 11 in New Jersey I

4 show him the chart of what we already completed and what
5 we have left to do.

6 THE COURT: I might be interested in that chart
7 as well.

8 MR. SATTERLEY: I can provide I've given to
9 counsel I can provide Your Honor.

10 THE COURT: Sure.

11 MR. SATTERLEY: What I did after Judge Kaplan
12 issue the ruling this morning all the experts deposition
13 that was cancelled and that I got of the six plaintiff
14 depositions I got five of them Dr. Abraham next Tuesday
15 on the 25th, Dr. Dotson the 27th in the morning the
16 treating doctor 27th the afternoon Dr. Egilman with
17 regard to once I think Mr. Brown who took the deposition
18 he has couple more hours left. So I gave another day to
19 Dr. Egilman on the 28th and Dr. Fel he's going to be out
20 of country early next week the early I can May 1st. So
21 all of those are before the third and so I got the
22 economist robin Johnson left to get a date for. We can
23 meet and confer with counsel to find out which experts
24 they're going to use I think they have three experts,
25 three maybe four experts that would be depose in the

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1 defense side. Those depositions will all be quick only
2 maybe two of them may be more than couple of hours Dr.
3 Chiriac if we're still going to use him I never depose
4 him before in these litigation he may be a little bit
5 longer and Dr. Sanchez to the extent he does do
6 additional testing he may the rest of those should be
7 fairly short with deposition. And of course we have PMQ
8 deposition of the retailer on calendar. Those should
9 not be lengthy deposition at all. So I guess I propose
10 to Your Honor is we go back to our regular weekly get
11 togethers Your Honor does such a great job managing the
12 docket managing this case we go back to that and then as
13 far as I know Your Honor currently in trial I've been
14 told by the counsel that case should be finish up next
15 week.

16 THE COURT: It should. I sure hope so I told
17 the jury.

18 MR. SATTERLEY: So I was going yo suggest if
19 Your Honor has availability we come back next Thursday
20 for another case management conference and that we come
21 back on May the 1st the following Monday for discussion
22 discussing motion in limine and work regarding three

23 motion in limine those were submitted before the TR0 was
24 entered we submitted the binder to Your Honor yet.

25 THE COURT: I don't believe so.

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1 MR. SATTERLEY: I don't believe so either.

2 THE COURT: I expect maybe additional motion in
3 limine with regard to the expert.

4 MR. SATTERLEY: There probably will be but I
5 believe Your Honor there's going to be those issues are
6 going to be similar to the issue in the Coit case. So
7 what I suggest Your Honor has availability on the first
8 second just come in talk about pretrial type thing and
9 then on the third we'll report back to Judge Kaplan what
10 we may accomplish trying to file admission to move
11 forward and I think to file permission to move forward
12 that we didn't bring a jury yet hardship on the eight
13 the Monday the 8th. And I'm confident that we can get
14 this discovery done with that being said it would be
15 there was a issue that Your Honor may or may not recall.

16 THE COURT: I do recall.

17 MR. SATTERLEY: What occurred was Stanford did
18 do the genetic testing and the treating doctor did what
19 whole panel of genetic testing turn up genetic report to
20 defense counsel I got past weekend I think we filed and
21 show Judge Kaplan on Tuesday file on Monday I believe
22 and so I think genetic issue all the genetic expert all
23 we have in the past BAP1. There's one deletion not
24 related to mesothelioma J&J may try to argue that we'll
25 have to address that in motion in limine and so I think

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1 that narrows generic defense issue quite a bit. So
2 that's the overview of the case. I think the other
3 witness just needs to be finished minthol is the
4 corporate representative I depose him about three hours
5 at the conclusion of that what ended up three hours I
6 have two hours left to finish. And I still stand by
7 that they're going to have two hours with that global
8 rep that's where we stand with regard to we could get to
9 trial.

10 THE COURT: You have thoughts.

11 MR. SATTERLEY: So we have met and conferred
12 and also this morning and --

13 THE COURT: We'll take the first day 10:00 CMC.

14 MR. SATTERLEY: So I think we should meet and
15 confer regarding with Mr. Brown Mr. Richman or whoever
16 is going to be counsel and try to work out a workable
17 time and also how many retailers are still with us if
18 you're going to be with us to the extent which one going
19 to be with us which ones are actively involve what we
20 learn is mostly the retailers are indemnify.

21 THE COURT: Again there's some condition so
22 they're maybe.

23 MR. SATTERLEY: It's really not clear because
24 what I was told the corporate representative on the 31st
25 he said that two of the retailers did not agree to

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1 indemnification but they cross-examine the LTL board of
2 director one Tuesday about that issue and he said

3 something different. He said no they're basically all
4 indemnify because one of the argument I was making was
5 they can't be protective party through indemnification
6 it's relevant now for different issue when they're all
7 paid for by J&J. So that's all overview of the case and
8 I'm sure counsel would tell me what I got wrong.

9 MR. KING: Your Honor --

10 THE COURT: Yes Mr. King.

11 MR. KING: Your Honor good afternoon Bryan King
12 on behalf of J&J transcript from the bankruptcy court
13 please allow me to just correct some of the things that
14 have been said before the Court today Judge Kaplan
15 bankruptcy court issue limited preliminary injunction to
16 all of the nondebtor protectbed party including J&J with
17 respect to LTL autostay remain in place no action to
18 LTL. With respect to the limited preliminary injunction
19 entered by Judge Kaplan this morning he made it clear
20 that the injunction is in place for at least June 15th
21 of 2023 and in that time no trials any of the protected
22 nondebtor party. So Valadez cannot be set for trial
23 before June 15, 2023, pursuant to the injunction issued
24 this morning. I just want to make sure the Court is
25 aware that the case discuss in early May are not

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1 realistic and quite frankly they're not permitted by the
2 limited injunction issued by Judge Kaplan this morning.
3 With respect to the other issues Judge Kaplan did
4 indicate that experts discovery and pretrial work may
5 continue and in fact with respect to Valadez case
6 Judge Kaplan made it clear in his ruling this morning
7 that the preliminary injunction with respect to no trial
8 before June 15th before June 16, 2023, also apply
9 specifically to Valadez and again I know Your Honor does
10 not have the benefit having the transcript before you or
11 a sign order by Judge Kaplan but I want to make sure the
12 Court's expectation were realistic in terms of what
13 happened this morning and what the preliminary
14 injunction actually entails.

15 THE COURT: All right. I appreciate that. I
16 guess there's quite a difference at least in this point
17 what I most focus on is what we have focused on before
18 which is working towards a date when the jury should be
19 called in previously past April 17th and you describe
20 Mr. Satterley had described what Judge Kaplan had ruled
21 obviously quite different again that's surprising. My

22 personal focus is try to manage my calendar and
23 obviously Judge Kaplan gets to decide which of the two
24 descriptions I heard is accurate but it does make a
25 difference.

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1 MR. SATTERLEY: Can I just briefly respond I
2 was the one who was on Zoom and talk to Judge Kaplan
3 along with J&J counsel Ms. Alli Brown was there I don't
4 know if counsel here was on but I respectfully disagree
5 with Mr. King Judge Kaplan specifically said motion to
6 stay May the 3rd he did not stay the injunction apply to
7 Valadez case. He lifted the injunction to both J&J LTL
8 before and he did not say the injunction to LTL. I will
9 what I do once I get the transcript I'll provide to
10 Your Honor I also send a letter tomorrow morning a
11 letter brief to Judge Kaplan J&J argument to seek
12 clarification to the extent they're confused but
13 certainly by next Thursday at the case management
14 conference Your Honor will have a clear position or

15 clear you know knowledge of what Judge Kaplan said.

16 THE COURT: Right.

17 MR. SATTERLEY: And what he intended and maybe
18 they're taking his language because the way it happened
19 at the very beginning he talk generally about the
20 injunction applying with regards to LTL then he talks
21 about cases in general and then he turns to Valadez.
22 And in Valadez he's very clear same thing he said on
23 Tuesday do what you have to do to get this case to trial
24 I told him eight to ten days that's what we have when
25 the original TR0 was issued. So what I suggest Your

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1 Honor what we do obviously have a disagreement is get
2 transcript we'll probably get it probably tomorrow
3 morning e-mail to Your Honor if we can I will also write
4 a letter brief to Judge Kaplan and get clarification so
5 that no confusion about what we're doing. I don't want
6 to ever violate a Court order I don't want to violate a
7 federal Court order I want to make sure we're on the
8 same page with that being said I think Your Honor should

9 set another case management conference which should not
10 prohibit at all next week we work up the case with
11 Judge Kaplan supposed to do.

12 MR. KING: Your Honor just briefly the hearing
13 is open to the public I attended the hearing I attended
14 the hearing the full hearing so to the extent it was
15 misrepresented that I was not on the hearing or at the
16 hearing or observe the hearing I in fact observe the
17 entire hearing Your Honor the transcript will speak for
18 itself once the transcript comes back I think that will
19 probably clear up by Your Honor any part of this.

20 MR. SATTERLEY: And we'll submit Your Honor the
21 transcript and if there's need for clarification we'll
22 contact Judge Kaplan I understand he may be either out
23 of state or travelling and so I don't want to burden
24 Judge Kaplan unless we have to. So I think the first
25 step would the transcript it might be good to not wait

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1 till Thursday if Your Honor has time on Monday or

2 Tuesday at 3:00 or 4:00 discussion on this issue so that
3 Your Honor seeks clarification we can then get
4 clarification to Judge Kaplan in between Monday or
5 Tuesday and Thursday and Judge Kaplan did say he would
6 be available for next week if you need to reach out to
7 him.

8 THE COURT: I think I'm fine with next Thursday
9 again I'm in the middle of a jury trial.

10 MR. SATTERLEY: Sure.

11 THE COURT: That won't end I don't believe
12 before Wednesday of next week interested because it
13 affects my calendar as to which of the two descriptions
14 of which Judge Kaplan and the chance of the Valadez case
15 it seems clear to me he always treated Valadez
16 separately his TR0 and paragraph to Valadez as I counted
17 last time do sufficiently familiar he actually corrected
18 the spelling of Valadez I assume the order was prepared
19 by Johnson & Johnson but sufficiently familiar that he
20 knows how Valadez was spelled. But I think next
21 Thursday at 3:00 is fine. I can at least as I
22 understand nobody disagrees that the fact can proceed.

23 MR. SATTERLEY: Yes, Your Honor. What I'm
24 fearful for J&J and LTL will not do what's necessary to
25 get their witness back on calendar and may be retailers

1 as well because in this situation we have everything
2 ready to go we serve Your Honor direction they move for
3 couple times and what I'm fearful of we get in this
4 situation I get my expert deposition today to occur and
5 I want them to do the same thing to get the case moving
6 so they don't want to go back to Judge Kaplan and we're
7 not ready to go to trial dragging their feet.

8 THE COURT: Well I don't want that to happen
9 either. I mean all of this is in Judge Kaplan.

10 MR. SATTERLEY: Except the discovery he lifted
11 the stay with all discovery he said the state court can
12 control discovery that's all back to Your Honor there's
13 no dispute on that so to the extent there's a discovery
14 dispute with regards to these experts it's in Your Honor
15 back to Your Honor for --

16 THE COURT: Let's modify what we have earlier
17 we'll have a CMC next Thursday at 3:00 if after getting
18 a transcript and maybe without the transcript if it
19 appears that the test is not before discovery so that if
20 Mr. Satterley is right then we can actually feasibly

21 call a jury in on Monday May 8th I want the case to be
22 prepare for that. And if that appears to be a problem
23 maybe we need to enter a conference to address.

24 MR. SATTERLEY: Why don't we do this Your Honor
25 not schedule anything right now but if we run into

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1 problem we'll meet and confer tomorrow with them and if
2 defense counsel and we'll work through these issues not
3 burden the Court at all if for some reason by Monday
4 we're not able to work through deposition schedule issue
5 we'll alert the Court.

6 THE COURT: That seems -- please go ahead.

7 MR. RICHMAN: Sorry judge this is Scott Richman
8 for J&J we're on the topic Your Honor Mr. Satterley has
9 raised with respect to the genetic testing we take a
10 very different view that Mr. Satterley does as far as
11 what was done there was a limited test that was
12 performed by the ambridge genetic it did not rule out of
13 the jegnome Mr. Satterley identify genetic mutation

14 was identified but the fact of the matter is there has
15 been genetic testing it's been limited not complete
16 testing that we request in our motion but the plaintiff
17 entire opposition to our original motion it was privacy
18 concern that has since for lack of better word that ship
19 has sailed I think that's an issue now where we need the
20 testing and frankly we're entitled to it which they now
21 put forward testing which I think is favorable to them
22 my concern is that again this is an issue which is going
23 to essentially put down the road and Mr. Satterley is
24 going to say there's no time for it now is exactly the
25 time to address it we do have opportunity now too

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1 conduct testing that we have requested it may even
2 testing further based on the blood sample but the fact
3 of the matter is there's additional testing I think we
4 have a right to respond to it we did ask for that's
5 something our motion is still pending before the Court
6 on that testing and obviously which is not change is the
7 long blood slide we're still waiting on counsel for that

8 those are two things we'll meet and confer tomorrow and
9 we'll happy to report back if we can't.

10 MR. SATTERLEY: The treating doctor did the
11 genetic not plaintiff expert those are what counsel said
12 plaintiff had done something no plaintiff doctors care
13 treatment of the patient but we will respond to their
14 motion procedurally serious procedural defects that we
15 will tell Your Honor about we'll file a response to that
16 motion to compel I believe it's style as motion to
17 compel.

18 MR. RICHMAN: And my understanding and correct
19 me if I'm wrong, Mr. Satterley, but plaintiff had
20 represented their response was going to be filed on the
21 day that the bankruptcy was re-filed. So it was my
22 understanding that plaintiffs were ready to file it but
23 for the bankruptcy being re-filed that day. It should
24 be something ready for plaintiff counsel to file it's
25 something we do need to address with the Court. And

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1 obviously the longer we wait for an opposition the
2 longer it's going to delay that issue being resolved
3 which is something we need to resolve before trial.

4 MR. SATTERLEY: Can't file a response with you
5 making new argument. We need testing done they
6 procedurally well I'm not going to go through procedure
7 defect they have. But they can't expect us we file
8 response on the day and several hours before our
9 response is due they file now they can't say we file a
10 response now new evidence new argument so I'll talk to
11 Ms. Clancy what we do it's not going to be tomorrow.

12 THE COURT: Let me ask at least in other cases
13 the BAP1 gene that has been the primary focus is there a
14 dispute whether that was testing.

15 MR. SATTERLEY: No I'm hearing the first time
16 they're saying somehow the treating doctor and genetic
17 testing BAP1 testing was done somatically long time ago
18 it's retained there's no deletion and there's no
19 deletion and the BAP1 so they're going to and we'll file
20 a motion in limine regarding all these genetic stuff
21 because their expert who you'll see is not really an
22 expert will basically say it's gene bad gene bad gene.
23 And when I ask him what's gene would you expect well I
24 can't tell I can't tell you what I expect I said, well,
25 when a pathologist makes a diagnosis, they compare what

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1 their findings are to known standards. What standards
2 are you trying to compare them to? He would never tell
3 me. So with all that being said Your Honor we're going
4 to file a motion in limine with regards to this
5 genetics. It sounds like they're going to stick to
6 their motion to compel we'll file a response to that in
7 the near future Ms. Clancy and I need to talk about that
8 and figure out exactly when, but certainly we'll meet
9 and confer about it tomorrow.

10 MR. RICHMAN: To answer Your Honor question
11 rather than argue the whole motion they did not test the
12 entire BAP1 BRCA1 or any of the others it was not
13 exhaustive testing. I will note for Your Honor they did
14 identify additional genetic mutations as being cancer
15 syndrome and specifically mesothelioma patient but like
16 I said I don't think now is the appropriate time to
17 litigate.

18 MR. SATTERLEY: We totally disagree with that.

19 THE COURT: What is the name of the gene.

20 MR. RICHMAN: It's RAD51C Your Honor as
21 Mr. Satterley at least agree that that's there. It's
22 gene represented to which is something our expert notes
23 in his declaration as something related to cancer
24 syndrome we're happy to litigate with Your Honor and I
25 still about Mr. Satterley Dr. Longo that's another issue

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1 we'll have to litigate as well as we're waiting to hear
2 response on.

3 MR. SATTERLEY: If we have time on May 1st or
4 May 2nd before we go back to Judge Kaplan on May 3rd we
5 talk about Your Honor more time this trial will be over
6 with hopefully and that's why I suggest that we try to
7 set some time as long as Mr. Richman has some relief he
8 wants to address.

9 MR. RICHMAN: Frankly my concern is that
10 Mr. Satterley I appreciate him confirming my point he
11 wants to wait and say to Your Honor there's not enough
12 time that's why I raise it now on April 20th and not

13 wait two weeks to address the issue so whether discovery
14 deposition or the genetic testing or the disruption of
15 the evidence we request to be preserved I think those
16 are all issue with Your Honor as soon as possible.

17 THE COURT: All right. I will see you next
18 Thursday at 3:00 unless meet and confers are
19 unsuccessful.

20 MR. SATTERLEY: I would suggest Your Honor.

21 THE COURT: Those cases are not going to have.

22 MR. SATTERLEY: Everything happen there's no
23 trial so what I would suggest we pick a date sometime in
24 May so that we can because there are a few of those that
25 may set trial date down the road. And so if we can find

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1 date if calendar is not too crazy.

2 THE COURT: I was going to say it can't be on
3 Friday.

4 MR. SATTERLEY: Thursday afternoon.

5 THE COURT: Well except Valadez -- Thursday
6 afternoon is fine.

7 MR. SATTERLEY: We can bump if it happens
8 hypothetical be in trial in May and J&J counsel is here
9 retail counsel is here we'll both be here if you have a
10 3:00.

11 THE COURT: That's fair enough.

12 MR. SATTERLEY: May 18th at 3:00.

13 THE COURT: Did everyone hear that.

14 MR. RICHMAN: What day.

15 THE COURT: Thursday.

16 MR. RICHMAN: What is that day we're setting.

17 THE COURT: CMC all for all J&J cases in this
18 court other than Valadez it may be at trial.

19 MR. RICHMAN: I echo Mr. King comment I was
20 here as well there be no trial date set but the
21 discovery can continue we'll obviously we do have
22 transcript speak for itself we obviously refer to that.

23 MS. KO: And Your Honor that's our position as
24 well I did not have the benefit of being at the hearing
25 but I'm reading some reporting on it now it says the

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1 injunction did not permit any --

2 (Simultaneous speaking)

3 MS. KO: But Your Honor for Valadez we're
4 before you not until next Thursday at 3:00 p.m. is that
5 right.

6 THE COURT: Unless during meet and confer that
7 meet and confer going to occur tomorrow if there is an
8 issue that either side believes colloquial stuck that I
9 expect that whoever wishes advise the department at
10 least in this case usually I don't get my e-mail out
11 until we're in trial this case is an exception
12 Judge Kaplan issue a TRO I think I knew about an hour or
13 two. So yes please advise the department directly if
14 you wish if there's an issue that you need my attention
15 earlier than next Thursday.

16 MS. KO: Understood Your Honor.

17 THE COURT: All right. Thank you very much.

18 MR. SATTERLEY: Thank you.

19 MS. KO: Thank you, Your Honor.

20 MR. RICHMAN: Thank you, Your Honor.

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